SFW 3721

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Docket No.: 213740US3DIV

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

RE: Application Serial No.: 09/961,137
Applicants: Shinji KOMATSU
Filing Date: September 24, 2001
For: PACKAGE BAG AND PACKAGING DEVICE
Group Art Unit: 3721
Examiner: HARMON, C.

SIR:

Attached hereto for filing are the following papers:

REQUEST FOR CONSIDERATION

Our check in the amount of **$0.00** is attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

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IN THE UNITED STATES TRADEMARK OFFICE

IN RE APPLICATION OF	:
SHINJI KOMATSU	: EXAMINER: HARMON, C.
SERIAL NO: 09/961,137	:
FILED: SEPTEMBER 24, 2001	: GROUP ART UNIT: 3721
FOR: PACKAGE BAG AND PACKAGING DEVICE	:

REQUEST FOR RECONSIDERATION

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

Favorable reconsideration of the Office action of November 4, 2004, including the rejection of claims 1-2 under 35 U.S.C. 103 as being unpatentable over the newly applied U.S. patent 6,212,859 (Bielik) in view of newly applied U.S. patent 4,395,254 (Shuster), is respectfully requested.

Claim 1 recites a device for continuously producing a package bag including a strippable seal, the device comprising a pair of thermal rolls having annular projections, at least one of which has a continuous wavelike or zig-zag shape along the circumference of the thermal roll. The wavelike or zig-zag shape for the strippable seal results in separating forces being first concentrated at the peaks of the wavelike or zig-zag shape, which aids in the separation at the seal (see paragraph bridging pages 3-4).

Bielik discloses a packaging machine with a rotary top sealer. According to this reference, a web 14 is folded, segmented into pouches by vertical seals 25 and sealed at the top by the interaction of the sealer plate 80 with the back up rollers 108. As is evident from

Fig. 5 of the reference, this forms a straight seal: neither the sealer plate 80 nor the back-up rollers 108 have a continuous wavelike or zig-zag shape. Thus Bielik fails to disclose this feature of the claims.

In recognition of this failure of Bielik, the Examiner has, in essence, taken the position that it would have been obvious for the elements 80 and 108 forming the seal in Bielik to have any shape, including a continuous wavelike or zig-zag shape. In support of this, the Examiner has cited Shuster to teach that a sealing element can have any shape. However, Shuster fails to provide a teaching sufficient to overcome the shortcomings of Bielik for at least the following reasons.

First, the seal relied upon in Shuster is the lateral seal and not a strippable top seal or a seal corresponding to that formed by the elements 80 and 108 of Bielik. Figure 10 of Shuster illustrates the formation of a continuous tube made from webs 124 and 126. The webs are sealed along their lengths by a heat sealer 132 having heat sealing elements 134. The heat sealing elements 134 "can be grouped in virtually any desired formation" (col. 7, lines 1-2). However, it is only after the formation of the continuous tube using the heat sealer 132 that the tube is cut to form bags which may be filled and sealed at their bottoms and tops. Accordingly, the teaching in Shuster that the heat sealing elements thereof "can be grouped in virtually any desired formation" applies to elements of a heat sealer forming a permanent side seal and not *strippable* seals at the tops of the individual bags.

Second, the general statement in Shuster that heat sealing elements "can be grouped in virtually any desired formation" does not suggest the specific wavelike or zig-zag shape set forth in the claims. Thus neither reference teaches this feature of the claims. Moreover, the Examiner cannot properly allege that "any desired" shape for the seal in Bielik would obviously include the claimed wavelike or zig-zag shape, because the claimed wavelike or zig-zag shape provides an advantageous effect (separating forces are first concentrated at the

peaks of the wavelike or zig-zag shape, which aids in the separation at the seal). Such an advantageous effect is evidence of unobviousness. MPEP 2144 (IV)(B). The claims therefore define over any combination of the cited references.

The amended claims are therefore believed to be allowable, and so a Notice of Allowability is respectfully solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
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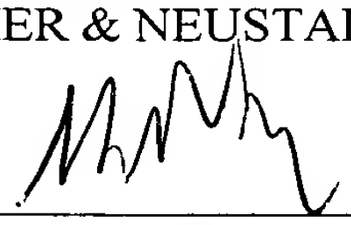

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